

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	ERNEST W. COLBERT (Cornelia Fort Airport))	
	Map 084-00-0, Parcel 1.01)	Davidson
	Various classifications)	County
	Tax Years 2001-2004)	

ORDER ON MOTION TO AMEND

The taxpayer has moved to amend his appeals for 2001-2002 "in the interest of justice and fairness" to include the two subsequent years (2003 and 2004). Taxpayer cites the fact that his appeal for 2001 involved the initial year of a four year reappraisal cycle, justifying his assumption that action on that appeal would be carried forward at least until the next reappraisal. He also notes his appeals to the Board have been pending throughout the time when appeals for 2003 and 2004 might have been filed before the county board of equalization and despite frequent correspondence with the county regarding the accruing taxes he was never instructed of the need for additional appeals or other action to include tax years 2003 and 2004 within the original appeal.

The assessor responds that the taxpayer has waited too long to appeal 2003 and 2004 assessments under the applicable statute, Tenn. Code Ann. §67-5-1412, that the request to amend was required to be presented within the time allowed for initial filing of appeals for those years (generally August 1 of the year at issue or within 45 days of action by the county board of equalization). The assessor also notes taxes for 2003-2004 are currently the subject of collection litigation in Davidson County Chancery Court.

The rule applicable to amendment of appeals is Rule 1360-4-1-.05(7), Uniform Rules of Procedure for Hearing Contested Cases, which permits amendment by written consent of the parties or by leave of the administrative judge, leave to be "freely given when justice so requires." Bearing in mind that the time constraints of the appeals statute are jurisdictional and cannot be waived, the administrative judge is in doubt whether a consensual amendment under Rule 1360-4-1 can confer jurisdiction on the Board where the jurisdictional requirements of the statute have not been met. Nevertheless the administrative judge finds that amendments of pleadings in the usual course relate back to the date of the original

pleading.¹ This result is consistent with prior rulings of the Commission, which have found no undue prejudice to the assessor in allowing amendment of an appeal to include subsequent years since the result of the prior year appeal generally is carried forward in any event until the next reappraisal.²

ORDER

By reason of the foregoing, it is ORDERED, that the taxpayer's request to amend is granted and the action of the Commission with respect to tax years 2001-2002 shall apply for tax years 2003 and 2004 as well. This order is subject to:

1. Reconsideration by the administrative judge, which must be requested in writing, stating specific grounds for relief and filed with the administrative judge within fifteen (15) days from the date of this order.
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. Review by the Chancery Court of Davidson County. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Dec. 5, 2006

Ogden Stokes
Administrative judge *by J. W. [unclear]*

cc: Mr. Richard Colbert, Esq.
Mr. Kenny Vinson, Assessor's office
Ms. Margaret Darby, Asst. Metro Atty.

¹ TRCP 15.03, applicable to contested case administrative proceedings under Rule 1360-4-1-.01 (3).

² *Appeal of Oak Ridge Properties* (Anderson Co., Tax Years 1993-1994).